

REMARKS

Claims 2, 4 and 8 have been cancelled. Claims 10-12 have been added. Accordingly, claims 1, 3, 5-7, 9 and 10-12 are at issue.

Claim 1 has been amended and is based on previous claims 1 and 4 and features of the description. New claim 10 is based on a feature of previous claim 1. New claims 11 and 12 are based on original claims 5 and 6 and structure that has been deleted from the currently amended version of claim 1.

The feature that the dispenser pack comprises a standard metering pump and a container that is tightly connected to said metering pump, wherein the standard metering pump allows normally ventilation of the container equipped with such a pump is disclosed in paragraph [0003]. A flow path for ventilation of the container formed between the retainer and the pump and closing of the flow path by a seal is disclosed in paragraph [0030]. New claim 10 is based on a feature of previous claim 1.

It is an object of the present invention to improve a dispenser pack so that standard metering pumps which allow ventilation of an associated container can be used for applications wherein the contact of environmental air with the product inside the container must be avoided and the volume of the container that contains a free-flowing medium can be adjusted to the decrease of the volume of the free-flowing medium to be dispersed from the container. A cost saving dispenser pack is provided wherein existing automatic installation equipment can be implemented by a relatively quick and simple retrofit. Further the present invention minimizes the number of different parts in stock.

Garcia does not disclose nor suggest a flow path formed between a retainer and a pump. The design of the known device does not provide a standard metering pump wherein said pump allows normally at least temporary ventilation of a container equipped with such a pump. Moreover, Garcia does not deal with a seal having an inner hole rim resting against the outside of the pump housing in an airtight manner, so that a flow path for ventilation of the container is closed by the seal. Garcia discloses on page 4, lines 38 to 40 in paragraph [0021] when a seal 132 is used said seal is retained to body 141 by friction or in a form fit manner, so that an easier assembly of these parts is possible. A seal having an inner hole rim that is pressed against body 141 in an airtight manner, so that the flow path for ventilation of the container is closed by the seal is not disclosed in Garcia. Stone, which seals its containers (2, 10) directly to the corresponding dip tubes (4, 12), adds absolutely nothing in this regard. Meshberg is similarly silent and also adds nothing in this regard. Furthermore, Stone is silent regarding a pump wherein said pump allows normally ventilation of the container equipped with such a pump. Even if a person skilled in the art had constructed the pump of Garcia with the inner structure of pump, as taught by Stone, this would not have resulted in the claimed subject matter.

Nomoto is silent regarding a standard metering pump wherein the standard metering pump allows normally at least temporary ventilation of an associated container by a flow path defined between a retainer and the pump. Consequently, Nomoto can not anticipate a dispenser pack with a seal having an inner hole rim resting against the outside of the pump housing in a flow path defined between a retainer and the pump so as to close the flow path to prevent ventilation of the container during use.

It is not visible how the person skilled in the art could have found the combination of features in an obvious manner.

Furthermore, with respect to added claims 11 and 12, as noted in Applicants' prior response and not addressed in any substantive fashion in the final rejection, the rejection of the structure in the claims is based upon an impermissible modification of the references.¹ Specifically, the rejection proposes to modify the combination of the pump of the follower piston structure of Garcia and the pump and flexible bag of Stone with the bag/container structure shown in Fig. 4 of Meshberg. However, this proposed modification is completely contrary to the express teachings and objects of Stone, as well as the principle of operation of Stone. Such proposed modifications are expressly not allowed under the case law and the provisions of the MPEP. See MPEP 2143.01 V, which states that "the proposed modification cannot render the prior art unsatisfactory for its intended purpose" and that "if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification"; and MPEP §2143.01 VI stating that "the proposed modification cannot change the principle of operation of a reference" and that "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious.

¹It is noted that the Examiner characterized the Applicants' arguments as attacking the references individually, but that characterization misses the point of Applicants' arguments, which point is that the proposed **combination** is improper because it renders the reference being modified unsuitable for its intended purpose and impermissibly changes the principle of operation of the reference. Accordingly, contrary to the Examiner's characterization of Applicants' arguments, the arguments go directly to the proposed **combination of references, and not to an individual reference.**

In this case, Stone requires that its bag 2 be fastened directly to the dip tube or inductor 4 so as to ensure that the bag 2 collapses about the dip tube 4 so that the material within the bag 2 is maintained in contact with the dip tube 4 (see column 4, lines 15-26 and Fig. 1). This is critical to achieving the express objects of Stone's invention, particularly the object of providing a sprayer for dispensing a spray regardless of the position in which the sprayer is held and the object of providing a sprayer in which the contents are emptied almost completely. (See column 4, lines 15-26 and Fig. 1 of Stone). The bag/container construction shown in Fig. 1 of Meshberg interferes with the construction, objects and the principle of operation disclosed in Stone because the construction of Meshberg would hold the bag away from the dip tube in the areas adjacent the upper end of the bag/container. Accordingly, the proposed **combination** will render Stone unsatisfactory for its intended purpose and impermissibly change the principle operation of Stone. There can be no rational underpinning for a combination where the combination (a) renders the prior art unsatisfactory for its intended purpose and/or (b) changes the principle of operation of the reference. As enunciated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, (82 USPQ2d at 1396) there must be some articulated reason with some **rational underpinning** to support the legal conclusion of obviousness. See also MPEP §§2143.01 V and VI, previously cited. Accordingly, for these reasons alone, the proposed combination in the rejection is improper and the rejections should be withdrawn.

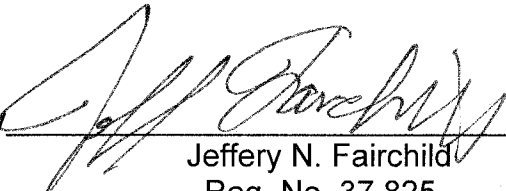
To the extent the Examiner repeats any rejection based upon the previously proposed combination of Garcia and Stone and Meshberg, it is respectfully requested

that the Examiner address the express prohibitions stated in MPEP §2143.01 V and VI as they apply to the arguments presented herein and in Applicants' prior response.

In view of the foregoing, reconsideration of the rejections and allowance of the case is respectfully requested.

Respectfully submitted,

WOOD, PHILLIPS, KATZ,
CLARK & MORTIMER

By _____
Jeffery N. Fairchild
Reg. No. 37,825

March 21, 2011

500 West Madison Street
Suite 3800
Chicago, IL 60661-2562
312/876-2106